

# NEWS RELEASE

For Immediate Release – January 10, 2003

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## ADMINISTRATION TO REAFFIRM COMMITMENT TO NO NET LOSS OF WETLANDS AND ADDRESS APPROACH FOR PROTECTING ISOLATED WATERS IN LIGHT OF SUPREME COURT RULING ON JURISDICTIONAL ISSUES

The U.S. Environmental Protection Agency and the U.S. Army today announced a pair of actions that will help Americans comply with the Clean Water Act's requirements for protection of the nation's wetlands. These actions, which reaffirm federal authority over the vast majority of America's wetlands, are in response to the Supreme Court's 2001 decision in *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*, which limited federal authority under the Clean Water Act to regulate certain isolated wetlands.

Today's action builds upon the Administration's commitment to protecting America's wetlands, including its "no net loss" of wetlands policy. The two agencies jointly issued clarifying guidance for the federal government's rules used to protect wetlands that are regulated under the Clean Water Act (CWA). Simultaneously, the Administration announced its intention to publish an Advance Notice of Proposed Rule Making (ANPRM) to solicit from the public data and information to clarify the extent of Clean Water Act coverage in light of *SWANCC*.

"We are committed to protecting America's wetlands and watersheds to the full extent under the Clean Water Act and the recent Supreme Court ruling. We are also committed to full public involvement in this process, and we will seek additional information and scientific data for possible rulemaking," said EPA Administrator Christie Whitman. "It is more important than ever that we work closely with tribes, states and local agencies to ensure strong protection of wetlands and other aquatic resources."

"Today's announcement is important because the Corps of Engineers regulatory officers and the regulated community now have guidance which more clearly describes the scope of jurisdiction for which permits are required," said Les Brownlee, Undersecretary for the Army and Acting Assistant Secretary of the Army for Civil Works. "As regards the ANPRM, the agencies have not engaged in a review of the regulations with the public concerning Clean Water Act jurisdiction for some time. The ANPRM will help ensure that the regulations are consistent with the CWA and that the public understands what waters are subject to CWA jurisdiction."

These two steps complement the actions announced December 26, 2002, when the Corps and EPA issued a regulatory guidance letter to improve wetland protections through compensatory mitigation, and the Administration unveiled a National Wetlands Mitigation Action Plan listing 17 action items that federal agencies will undertake to improve the effectiveness of wetlands restoration. Through those actions, the agencies affirmed their commitment to achieving the goal of no net loss of wetlands under their regulatory programs and to increase the overall function and value of the nation's wetlands through public and private, regulatory and non-regulatory initiatives and partnerships. Representatives of EPA and the Corps testified before Congress on September 19, 2002, pledging the actions announced today.

In addition to the Regulatory Guidance Letter/ National Wetlands Mitigation Action Plan (RGL/MAP), the Administration's commitment to protecting and restoring America's wetlands is reflected in the conservation title of the 2002 Farm Bill, which provides an unprecedented \$47 billion over the next decade—that includes funding for conservation programs that will double the number of wetlands protected to a total of 2.275 million acres of wetlands and other aquatic resources. And in December 2002, President Bush signed a bill reauthorizing the North American Wetlands Conservation Act, which extends for five years a program under which the federal government

matches donations from sportsmen, state wildlife agencies, conservationists and landowners who pledge to protect millions of acres of wetlands.

The SWANCC decision also highlights the important role of states in protecting waters not addressed by federal law. EPA's Wetland Program Development Grants, currently funded at \$15 million annually, would be boosted to \$20 million under the FY'04 budget that President Bush will soon submit to Congress. The grants will help states, tribes, and local governments improve the capability of their wetland programs.

The new guidance clarifies the following:

- Field staff should continue to assert jurisdiction over traditional navigable waters (and adjacent wetlands) and, generally speaking, their tributary systems (and adjacent wetlands).
- In light of *SWANCC*, field staff should not assert CWA jurisdiction over isolated waters that are both intrastate and non-navigable, where the sole basis available for asserting CWA jurisdiction rests on any of the factors listed in the "Migratory Bird Rule".
- In light of *SWANCC*, field staff should seek formal project-specific HQ approval prior to asserting jurisdiction over isolated non-navigable intrastate waters based on other types of interstate commerce links listed in current regulatory definitions of "waters of the U.S."

The CWA protects wetlands, streams, and other waters from discharges of pollutants by requiring permits with appropriate environmental safeguards before a discharge may be authorized. In *SWANCC*, the Supreme Court held that the Corps had exceeded its CWA regulatory authority in asserting jurisdiction over isolated intrastate non-navigable ponds based on the Migratory Bird Rule.

Although the *SWANCC* decision limits federal CWA jurisdiction over isolated, intrastate, non-navigable waters and wetlands, other federal or state laws and programs still cover these waters and wetlands. The Food Security Act's "Swampbuster" requirements and the Wetlands Reserve Program under the U.S. Department of Agriculture are unaffected. In addition, other federal programs supporting wetlands protection and restoration continue, including the following: the Fish and Wildlife Service's Partners in Wildlife, the National Marine Fisheries Service's Coastal Wetlands Restoration Program, the EPA's Five-Star Restoration program, the National Estuary Program, and the Migratory Bird Conservation Commission, which is composed of the Secretaries of Interior and Agriculture, the Administrator of EPA, and Members of Congress.

The Federal Register document and additional information are available either on EPA's Office of Water home page at:  
or the Corps Regulatory Branch home page at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg/citizen.htm>

Interested persons may also contact EPA's Wetlands Helpline at 800/832-7828 to obtain copies.